

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

RADIUS SERVICES, LLC., a)
Delaware limited liability company,) C.A. No. 09L-02-046 (JTV)
))
Plaintiff,)
))
v.)
))
JACK CORROZI CONSTRUCTION,))
INC., a Delaware corporation,))
DOVEVIEW, LLC, a Delaware))
limited liability company, FRANK))
ROBINO COMPANIES, LLC, a))
Delaware limited liability company,))
JOHN CORROZI, an individual,))
MICHAEL STORTINI, an individual,))
PAUL ROBINO, an individual,))
))
Defendants.)

Submitted: November 10, 2009

Decided: February 26, 2010

Donald L. Logan, Esq., Logan & Associates, LLC., New Castle, Delaware. Attorney for Plaintiff.

Scott G. Wilcox, Esq., Bayard, P.A., Wilmington, Delaware. Attorney for Defendants
Frank Robino Companies, John Corrozi, Michael Stortini, and Paul Robino.

*Upon Consideration of
Defendants' Motion For Reargument*
DENIED

VAUGHN, President Judge

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ORDER

Upon consideration of certain defendants' motion for reargument, the plaintiff's opposition thereto, and the record of this case, it appears that:

1. Certain defendants in this case have moved for reargument of the Court's September 30, 2009 opinion that denied their motion to dismiss count five of the plaintiff's amended complaint.

2. The plaintiff, Radius Services, filed this mechanic's lien action alleging that it has not been paid for the installation of fire suppression systems in an apartment complex. Radius alleges that the owner of the apartment complex is Doveview LLC and that the general contractor was Jack Corrozi Construction, Inc. 3. ~~The other~~ defendants, the ones who filed the motion to dismiss count five and who have now filed this motion for reargument, are Frank Robino Companies LLC, John Corrozi, Michael Stortini, and Paul Robino ("the moving defendants"). They are held in the case only by count five, which is entitled, "negligent misrepresentation."

4. The moving defendants had moved to dismiss Radius' fifth count on the grounds that the Superior Court lacked subject matter jurisdiction over a claim for negligent misrepresentation and that the plaintiff's had failed to state a claim upon which relief can be granted.

5. In the opinion of September 30, 2009, the motion to dismiss was denied. I concluded that a claim for negligent misrepresentation, also known as equitable fraud, can be heard only in the Court of Chancery, but that a claim for common law fraud may be heard in Superior Court. I further concluded that count five could be construed as alleging both, and that at some point Radius must decide whether it

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wishes to have count five transferred to the Court of Chancery where its equitable fraud claim could be heard, or whether it was content to proceed in this Court on the common law fraud claim only. I then concluded that Radius' fifth count, read as a common law fraud claim, was sufficient to state a claim upon which relief can be granted.

6. The standard of review for a Rule 59(e) motion for reargument is well-established.¹ A motion for reargument will usually be denied unless the court has “overlooked a controlling precedent or legal principles, or the court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”² A motion for reargument should not be used merely to rehash the arguments already decided by the court, nor will the court consider new arguments that the movant could have previously raised.³

7. In this motion for reargument, the moving defendants contend the averments contained in Radius' amended complaint do not allege or demonstrate that any of the moving defendants had a business relationship with Radius, and that for this reason Radius' amended complaint fails to state a claim under the “duty to speak” theory of common law fraud. In general, they contend that I misapprehended their

¹ *State v. Brooks*, 2008 WL 435085, at *1 (Del. Super.).

² *Lamourine v. Mazda Motor of Am.*, 2007 WL 3379048, at *1 (Del. Super.).

³ *Brooks*, 2008 WL 435085, at *1 (internal quotation marks omitted); *St. Search Partners, L.P. v. Ricon Int'l, L.L.C.*, 2006 WL 1313859, at *1 (Del. Super.).

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arguments and the facts of this case.⁴

8. After having reviewed and considered the motion for reargument and the plaintiff's opposition thereto, I have concluded that the motion for reargument should be denied for the reasons given by the plaintiff in its opposition response.

9. Therefore, the motion for reargument is ***denied***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File

⁴ Moving Defs. Mot. for Rearg. at ¶2. Radius contends that the moving defendants' motion for reargument was untimely. A motion for reargument must be filed within five days after the filing of the court's decision. An untimely motion may not be considered. The computation of time is governed by Superior Court Civil Rule 6, which provides that weekends, holidays, and the day of the act are not counted. The deadline for filing a motion for reargument was October 7, 2009. The docket reflects that the moving defendants' motion was filed on October 7 and accepted on October 8. The motion was initially rejected for an erroneous reason; failure to include an argument date in the notice of motion. It is the practice of this Court to decide motions for reargument on the motions and not hear any oral argument. Consequently, because an argument date was not needed, the motion should have been accepted. Thus, the motion was timely filed on October 7.